IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2006

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) No.2505 of 2006

Commissioner of Income-tax,
Chennai. ..Appellant

Vs.

M/s.Polaris Software Lab Ltd.,
No.244, Carex Centre,
Mount Road, Chennai-6. ..Respondent

Appeal under Section 260A of the Income Tax Act, 1961 against th order of the Income Tax Appellate Tribunal, Madras, 'B' Bench date 28.04.2006 in I.T.A. No.1417/Mds/2002 for the assessment year 1998-9 against the order of the Commissioner of Income Tax (Appeals) i I.T.A.No. 518/M.2001-2002 against the order of the Deputy Commissione of Income Tax, Company Circle-IV(5), Chennai-6.

For Appellant : Mr.T.Ravi Kumar

JUDGMENT

(Judgment of the court was delivered by
P.P.S.Janarthana Raja, J.)

This appeal is filed under Section 260A of the Income Tax Act 1961 by the Revenue against the order of the Income Tax Appellat Tribunal, Madras, 'B' Bench dated 28.04.2006 passed in in I.T.A No.1417/Mds/2002, raising the following substantial questions of law:-

1. Whether in the facts and circumstances of the case, the Tribunal was right in remitting back the matter to the lower authority to find out the nature of income when there is a clear cut finding about the same by the lower authority after a detailed scrutiny?
2. Whether in the facts and circumstances of the case, the Tribunal was right in directing the lower authority to decide the issue in accordance

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with the ratio of the decisions which were rendered in the context of sec80HHC, when the assessee in question is not at all claiming benefit of that section?"

2. The facts leading to the above questions of law are as under:

The assessee is a Private Limited Company and is engaged in th business of software technology. The relevant assessment year i 1998-99 and the corresponding accounting year ended on 31.03.1998 The assessee filed Return of income on 27.11.1998 admitting income o Rs.5,51,780/-. The said Return was processed under Section 143(1) o the Income-tax Act (hereinafter referred to as the "Act"). Later notice under Section 143(2) of the Act was issued by the Assessin Officer. Subsequently, assessment was completed on a total income o Rs.30,47,010/-. While computing the assessment, the Assessing Office treated the interest receipts as "income from other sources" and no as "business income", as claimed by the assessee. Aggrieved by th order, the assessee filed an appeal to the Commissioner of Income-ta (Appeals). The C.I.T.(A) dismissed the appeal and upheld the order o the Assessing Officer. Aggrieved, the assessee filed an appeal to th Income-tax Appellate Tribunal (hereinafter referred to as th "Tribunal"). The Tribunal allowed the appeal for statistical purpos by remanding the matter back to the Assessing Officer to find out th true nature of the income and assess the same accordingly.

3. Learned Standing Counsel appearing for the Revenue submitte that the Tribunal has erred in remitting back the matter to th Assessing Officer to find out the nature of the income, when th Assessing Officer had already scrutinised the same in detail, an contended that it should be assessed only under "income from othe sources".

4. Heard the counsel. The Tribunal had remanded the matter an held as follows:

"3. After going through the records, it is observed that the answer to this question would depend on the nature of income, whether such income is income from business or income from other sources. It is not clear from the records whether the interest income is from business income or income from other sources. Accordingly, the issue is set aside to the file of the Assessing Officer to decide the issue afresh after giving reasonable opportunity of being heard to the Assessee. The Assessing Officer is directed to find out the nature of the income, whether it is income from other sources or income from business. If it is income from other sources, then netting is not allowed in view of the decision of the Hon'ble Jurisdictional High Court in the

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case of K.S.Subbiah Pillai & Co. (India) Pvt. Ltd. v. CIT (260 ITR 304). If it is business income then the Assessing Officer will find out the nexus between the interest earned and the interest paid and decide the issue in accordance with the ratio of the decision of the Special Bench of this Tribunal in the case of Lalsons Enterprises v. DCIT (89 ITD 25) or CIT v. S.S.C. Shoes (275 ITR 46). Accordingly, the appeal of the Assessee is allowed for statistical purposes."

The direction in the remand order is to find out the nature of th income and depending upon the nature of the income, the Assessin Officer should consider the contentions of the assessee in accordanc with the judgment, cited supra, in the remand order. The said reman order, in no way, affects the interest of the Revenue and the Revenu also is not in a position to produce any material or evidence to sho that the interest of the Revenue is affected, by this remand order.

5. In view of the foregoing reasons, we find no error or lega infirmity in the order of the Tribunal and the same does not requir interference. Hence, we find no merit in this appeal and accordingly no substantial questions of law arise for consideration of this Cour and the tax case is dismissed. No costs.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

TO

1. THE ASSISTANT REGISTRAR
INCOME TAX APPELLATE TRIBUNAL
RAJAJI BHAVAN, BESANT NAGAR,
CHENNAI-90

2. THE INCOME TAX APPELLATE
TRIBUNAL,
MADRAS 'B' BENCH,
MADRAS.

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3. THE COMMISSIONER OF
INCOME TAX (APPEALS)
MADRAS.

4. THE ASST. COMMISSIONER OF
INCOME TAX, CIRCLE-IV (5)
CHENNAI-6

1 CC TO MR. PUSHYA SITARAMAN, S.S.C, FOR IT DEPT, SR 52885

T.C. (A) No.2505 of 2006

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